

REMARKS

Claims 1-28 were rejected under obviousness-type double patenting, citing the Singh patent. In order to be double patenting, the same inventors would have to be involved. Since the Singh patent does not have common inventors with the present application, the judicially created doctrine of obviousness-type double patenting has no applicability here. Reconsideration is requested.

Claims 1-28 were also rejected based on the Yan patent under Section 102(e).

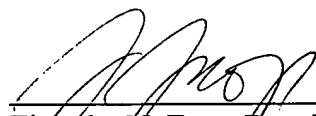
However, Yan does not teach forming a ruthenium capping layer over a spacing layer. The asserted spacing layer 1201 is not positioned under the layer 1011, the asserted ruthenium capping layer. The layer 1011 is clearly in no way positioned over the material 1201. Therefore, reconsideration of the rejection is respectfully requested.

In view of these remarks, the application should now be in condition for allowance.

Respectfully submitted,

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